

No. 12226

United States
Court of Appeals
for the Ninth Circuit

HELEN YOUNG,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court
for the Southern District of California
Central Division

FILED

MAY 13 1960

PAUL P. O'BRIEN,

No. 12226

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

HAL HUGHES,

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Los Angeles 13, Calif.

For Appellee:

JAMES M. CARTER,

United States Attorney.

PAUL FITTING,

Assistant U. S. Attorney.
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Los Angeles 12, Calif. [1*]

* Page numbering appearing at foot of page of original certified Reporter's Transcript.

In the District Court of the United States in and
for the Southern District of California, Central
Division

September, 1948, Term

No. 20329

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HELEN YOUNG and EDYTHE L. FOXALL,

Defendants.

INDICTMENT

[U.S.C., Title 18, Sec. 88; U.S.C., Title 38, Secs.
697 and 715—Conspiracy to Defraud; Causing
False Statements Concerning a Claim for Bene-
fits.]

The grand jury charges:

COUNT ONE

[U.S.C., Title 18, Sec. 88]

Prior to March 1, 1946, and continuing there-
after to on or about the date of the return of this
indictment, within the Central Division of the
Southern District of California, defendants, Helen
Young and Edythe L. Foxall, did conspire and
agree together and with others to the grand jury
unknown to defraud the United States; namely, to
impair and obstruct the functioning of the Vet-
erans Administration, an agency of the United
States, by causing said agency to guarantee on.

behalf of the Government of the United States loans to veterans for purchasing property and constructing dwellings thereon to be occupied as their homes, in cases where such veterans were paying amounts for such property and such construction that exceeded the reasonable value thereof, as determined by proper appraisals made by appraisers designated by the Administrator of Veterans Affairs, contrary to public policy as expressed in the Servicemen's Readjustment Act of 1944 (38 U.S.C., 694, et seq.), and the Regulations issued thereunder.

It was a part of said conspiracy that the objects thereof would be accomplished as follows: [2]

Defendants would hold themselves out as real estate agents and contractors; would sell lots of their own and of others to veterans of World War II and would contract to build houses for veterans, such purchases and construction to be financed by loans guaranteed by the Government of the United States under the Servicemen's Readjustment Act of 1944; would execute and submit to the lending institutions that were to make the loans to the veterans, escrow instructions, contracts and similar papers, from which it would appear that the lots were being sold to veterans at or below the reasonable value of such lots as determined by appraisers designated by the Administrator of Veterans' Affairs and that the houses were being constructed at firm prices, which also did not exceed such reasonable values; and would cause the lending institutions in applying to the Veterans Ad-

ministration for guarantees of the loans to purchase such lots and to build such houses to certify that the amounts so reported by defendants were the amounts to be paid by the veterans and did not exceed such reasonable values; but defendants would require such veterans to make cash payments for the lots in excess of the sales prices reported to the lending institutions and would conceal from the lending institution and the Veterans Administration the existence of contracts to pay prices over such reasonable values of said lots, and the fact of such overpayments; and at or about the same time that the construction contracts containing the firm price were submitted to the lending institution, defendants would cause the veterans to execute new construction contracts to pay cost plus ten per cent, said cost not to be below a minimum figure at or slightly below the Veterans Administration appraisal, and not to exceed a maximum figure well over such appraisal, which contract would be concealed from the lending institution and the Veterans Administration; and defendants would demand of said veterans not only the maximum costs fixed in such contracts but also additional amounts for extras.

To effect the objects of said conspiracy, defendants committed divers overt acts in the Central Division of the Southern District of California, among which are the following:

(1) On or about May 14, 1946, defendant Helen Young gave a receipt to William O. Given for \$700.00, as deposit on Lot 99, Tract 9974, 10819

Barman [3] Avenue, Culver City, California, showing the total price to be \$2,200.00;

(2) On or about May 14, 1946, defendant Edythe L. Foxall signed Escrow Instructions showing the purchase price of the lot at 10819 Barman Avenue to be \$1,500.00, to be paid by William O. Given and Jean F. Given;

(3) On or about May 9, 1946, defendant Helen Young signed a contract to construct a house on Lot 98 of Tract 9974, for Lloyd Shearer and Marva P. Shearer, for \$8,171.00.

(4) On or about May 9, 1946, defendant Helen Young caused Lloyd Shearer and Marva P. Shearer to sign a building construction contract by which a dwelling was to be constructed by the defendant on a cost plus ten per cent basis, with a minimum cost figure of \$8,200.00 and a maximum cost figure of \$9,000.00. [4]

COUNT TWO

[U.S.C., Title 38, Secs. 697 and 715]

On or about July 1, 1946, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants Helen Young and Edythe L. Foxall did knowingly cause a false certificate to be made concerning a claim for benefits under the Servicemen's Readjustment Act of 1944 (38 U.S.C., Sections 694, et seq.); in that defendants did inform the Culver City Branch No. 366 of the Bank of America National Trust and Savings Association that the amount to be paid by Lloyd Shearer, a veteran of World War II,

to purchase a lot and construct a house at 10813 Barman Avenue, Culver City, California, as to which a loan guarantee was being sought from the Government of the United States, was \$9671.00, being made up of \$1500.00 to purchase said lot and \$8171.00 to construct such house, and did cause said bank to certify in a Home Loan Report presented to the United States Veterans Administration that the amount to be paid by such veteran to purchase such lot and to construct such house was \$9671.00 and did not exceed the reasonable value thereof of \$9700.00, as determined by a proper appraisal dated May 3, 1946, made by Harrison H. Crawford, an appraiser designated by the Administrator of Veterans' Affairs; whereas, as defendants well knew and caused to be concealed from said bank and the Veterans Administration, defendants had caused said veteran to sign a contract to pay \$2200.00 for such lot, and had caused said veteran to sign a contract to pay cost plus 10 per cent, with a minimum cost figure of \$8200.00 and a maximum cost figure of \$9000.00 for the construction of such house, and did demand from said veteran the sum of \$9000.00 for such construction, or a total of \$11,200.00 for such house and lot. [5]

COUNT THREE

[U.S.C., Title 38, Secs. 697 and 715]

On or about June 15, 1946, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants Helen Young and Edythe L. Foxall did knowingly cause a false

certificate to be made concerning a claim for benefits under the Servicemen's Readjustment Act of 1944 (38 U.S.C., Sections 694, et seq.), in that defendants did inform the Culver City Branch No. 366 of the Bank of America National Trust and Savings Association that the amount to be paid by William O. Given, a veteran of World War II, to purchase a lot and construct a house at 10819 Barman Avenue, Culver City, California, as to which a loan guarantee was being sought from the Government of the United States, was \$9800.00, being made up of \$1500.00 to purchase said lot and \$8300.00 to construct such house, and did cause said bank to certify in a Home Loan Report presented to the United States Veterans Administration that the amount to be paid by such veteran to purchase such lot and to construct such house was \$9800.00 and did not exceed the reasonable value thereof of \$9800.00, as determined by a proper appraisal dated April 26, 1946, made by Harrison H. Crawford, an appraiser designated by the Administrator of Veterans' Affairs, whereas, as defendants well knew and caused to be concealed from said bank and the Veterans Administration, said defendants had demanded and did receive from said veteran the sum of \$2200.00 for such lot and had caused said veteran to sign a contract to pay cost plus 10 per cent, with a minimum cost figure of \$8200.00 and a maximum cost figure of \$9000.00, for the construction of such house, and did demand from said veteran the sum of \$9000.00 for such construction, or a total of \$11,200.00 for such house and lot. [6]

COUNT FOUR

[U.S.C., Title 38, Secs. 697 and 715]

On or about August 1, 1946, in Los Angeles County, California, within the Central Division of the Southern District of California, defendant Helen Young did knowingly cause a false certificate to be made concerning a claim for benefits under the Servicemen's Readjustment Act of 1944 (38 U.S.C., Sections 694, et seq.), in that defendant did inform the Culver City Branch No. 366 of the Bank of America National Trust and Savings Association that the amount to be paid by Louis J. Gablick, a veteran of World War II, to purchase a lot and construct a house at 5117 Fairbanks Way, Culver City, California, as to which a loan guarantee was being sought from the Government of the United States, was \$9800.00, being made up of \$1300.00 to purchase said lot and \$8500.00 to construct such house, and did cause said bank to certify in a Home Loan Report presented to the United States Veterans Administration that the amount to be paid by such veteran to purchase such lot and to construct such house was \$9800.00, and did not exceed the reasonable value thereof of \$9800.00, as determined by a proper appraisal dated April 22, 1946, made by Harrison H. Crawford, an appraiser designated by the Administrator of Veterans' Affairs, whereas, as defendant well knew and caused to be concealed from said bank and the Veterans Administration, defendant had caused said veteran to sign a contract to pay \$1650.00 for such lot and caused said vet-

eran to sign a contract to pay cost plus 10 per cent, with a maximum cost figure of \$8200.00 and a maximum cost figure of \$9000.0, for the construction of such house, and did demand from said veteran the sum of \$9000.00 for such construction, or a total of \$10,650.00 for such house and lot. [7]

COUNT FIVE

[U.S.C., Title 38, Secs. 697 and 715]

On or about July 1, 1946, in Los Angeles County, California, within the Central Division of the Southern District of California, defendant Helen Young did knowingly cause a false certificate to be made concerning a claim for benefits under the Servicemen's Readjustment Act of 1944 (38 U.S.C., Sections 694, et seq.); in that defendant did inform the Culver City Branch No. 366 of the Bank of America National Trust and Savings Association that the amount to be paid by William J. Hampton, a veteran of World War II, to construct a house at 10762 Braddock Drive, Culver City, California, as to which a loan guarantee was being sought from the Government of the United States, was **\$8283.00**, which, added to the \$1500.00 that the veteran was paying to purchase the lot, made a total of \$9783.00 to purchase said lot and construct said house, and did cause said bank to certify in a Home Loan Report presented to the United States Veterans Administration that the amount to be paid by such veteran to purchase such lot and to construct such house was \$9783.00 and did not exceed the reasonable value thereof of \$9800.00, as determined by

a proper appraisal dated April 23, 1946, made by Harrison H. Crawford, an appraiser designated by the Administrator of Veterans' Affairs; whereas, as defendant well knew and caused to be concealed from said bank and the Veteran Administration, defendant did cause said veteran to sign a contract to pay cost plus 10 per cent, with a minimum cost figure of \$8200.00 and a maximum cost figure of \$9000.00, for the construction of such house, and did demand from said veteran the sum of \$9000.00 for such construction, or a total of \$10,500.00 for such house and lot. [8]

COUNT SIX

[U.S.C., Title 38, Secs. 697 and 715]

On or about July 1, 1946, in Los Angeles County, California, within the Central Division of the Southern District of California, defendant Helen Young did knowingly cause a false certificate to be made concerning a claim for benefits under the Servicemen's Readjustment Act of 1944 (38 U.S.C., Sections 694, et seq.); in that defendant did inform the Culver City Branch No. 366 of the Bank of America National Trust and Savings Association that the amount to be paid by Thomas F. Carroll, a veteran of World War II, to construct a house at 10723 Franklin Avenue, Culver City, California, as to which a loan guarantee was being sought from the Government of the United States, was \$8200.00, which, added to the \$1800.00 that the veteran was paying to purchase the lot, made a total of \$10,000.00 to purchase said lot and construct

said house, and did cause said bank to certify in a Home Loan Report presented to the United States Veterans Administration that the amount to be paid by such veteran to purchase such lot and to construct such house was \$10,000.00 and did not exceed the reasonable value thereof of \$10,000.00, as determined by a proper appraisal dated April 8, 1946, made by Harrison H. Crawford, an appraiser designated by the Administrator of Veterans' Affairs; whereas, as defendant well **knew and caused** to be concealed from said bank and the Veterans Administration, defendant did cause said veteran to sign a contract to pay cost plus 10 per cent, with a minimum cost figure of \$8200.00 and a maximum cost figure of \$9500.00, for the construction of such house, and did demand from said veteran the sum of \$9500.00 for such construction, or a total of \$11,300.00 for such house and lot.

A True Bill.

/s/ C. B. AHLSEDE,
Foreman.

/s/ JAMES M. CARTER,
United States Attorney.

[Endorsed]: Filed Oct. 6, 1948. [9]

[Title of District Court and Cause.]

BILL OF PARTICULARS

Comes Now the United States of America, the plaintiff in the above entitled cause, and in response

to defendants' Demand For Bill Of Particulars, states as follows:

The following are the statutes concerning loans guaranteed by the Government which are involved in the indictment in the above matter:

Sections 500 (38 U.S.C. 694), 501 (38 U.S.C. 694a), 504 (38 U.S.C. 694 d), and 1500 (38 U.S.C. 697), of the Servicemen's Readjustment Act of 1944; and

Section 15 of the Act of March 20, 1933 (38 U.S.C. 715).

Dated this 29th day of October, 1948.

JAMES M. CARTER,
United States Attorney.

/s/ PAUL FITTING,
Assistant U. S. Attorney.

[Endorsed]: Filed Nov. 1, 1948. [10]

[Title of District Court and Cause.]

MOTION TO DISMISS THE INDICTMENT AND THE SEVERAL COUNTS THEREOF

These defendants, Helen Young and Edythe L. Foxall, severally move that the indictment herein, and each and every count thereof severally, be dismissed, upon the following grounds:

That the indictment does not state facts sufficient to constitute an offense against the United States, and that each count thereof fails to state

facts sufficient to constitute an offense or offenses against the United States.

/s/ HAL HUGHES,
Attorney for Defendants Helen Young and Edythe
L. Foxall.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed Nov. 5, 1948. [11]

At a stated term, to wit: The September Term, A.D. 1948, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday, the 5th day of January, in the year of our Lord one thousand nine hundred and forty-nine.

Present: The Honorable Peirson M. Hall, District Judge.

[Title of Cause.]

For hearing on motion of defendants to dismiss, pursuant to notice thereof filed Nov. 5, 1948; Paul Fitting, Ass't U. S. Att'y, appearing as counsel for Gov't; Hal Hughes, Esq., appearing as counsel for defendants, who are both present on O/R;

Attorney Hughes argues in support of motion to dismiss, and Attorney Fitting argues in reply. Court orders said motion to dismiss denied.

Reading of Indictment is waived and each de-

defendant pleads not guilty to each of the six counts of the Indictment.

Court orders cause set for trial Feb. 15, 1949, 10 a.m., before Judge Mathes. [25]

[Title of District Court and Cause.]

VERDICT

We, the jury in the above-entitled cause, find the defendant, Helen Young, not guilty as charged in the First Count of the indictment and guilty as charged in the Second Count of the indictment; and guilty as charged in the Third Count of the indictment; and guilty as charged in the Fourth Count of the indictment; and guilty as charged in the Fifth Count of the indictment; and [26] guilty as charged in the Sixth Count of the indictment.

Los Angeles, California, March 3rd, 1949.

/s/ R. W. BRAZELTON,
Foreman of the Jury.

[Endorsed]: Filed March 3, 1949. [27]

District Court of the United States for the Southern
District of California, Central Division

No. 20329—Criminal

UNITED STATES OF AMERICA,

vs.

HELEN YOUNG.

JUDGMENT AND PROBATIONARY ORDER

Indictment (6 Counts—Violation 38 U.S.C., §§ 697
and 715—18 U.S.C., § 88)

On this 28th day of March, 1949, came the attorney for the government and the defendant appeared in person and with her attorney, Hal Hughes, Esquire.

It Is Adjudged that the defendant has been convicted upon her plea of not guilty on all counts and verdict of guilty on Counts Two, Three, Four, Five and Six [Not Guilty on Count One] of the offenses of having on June 15, 1946, July 1, 1946, August 1, 1946, caused false certificates to be made by the Bank of America stating that the amount to be paid for the houses and lots described did not exceed the reasonable value thereof as determined by a proper appraisal made by a designated appraiser of the Administrator of Veterans' Affairs, as charged in Counts Two, Three, Four, Five, and Six of the indictment; and the court having asked the defendant whether she has anything to say why judgment should not be pronounced, and

no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of one year in an institution to be selected by the Attorney General of the United States or his authorized representative, and pay to the United States of America a fine of \$1,000 for the offense charged in the Second Count of the indictment; and be further imprisoned for a period of one year and pay a fine of \$1,000 for the offense charged in the Third Count of the indictment; and be further imprisoned for a period of one year and pay a fine of \$1,000 for the offense charged in the Fourth Count of the indictment; and be further imprisoned for a period of one year and pay a fine of \$1,000 for the offense charged in the Fifth Count of the indictment; and be further imprisoned for a period of one year and pay a fine of \$1,000 for the offense charged in the Sixth Count of the indictment; and be further imprisoned until said fines are paid or she is otherwise discharged as provided by law.

It Is Further Adjudged that the periods of imprisonment imposed under Counts Two, Three, Four, Five and Six of the indictment shall commence and run concurrently.

It Is Further Adjudged that execution of the sentences hereinabove imposed for the offenses charged in Counts Two, Three, Four, Five and Six be and is hereby suspended and the defendant is placed on probation for the period of five years

commencing forthwith; and the conditions of probation are fixed as follows: during the probationary period the defendant shall (1) make full restitution of \$3,200, such restitution to be made at such times and in such installments as the Probation Officer of this Court shall direct, the proceeds of such restitution to be applied to reduce the loans of the veterans involved, as follows:

Name of Veteran	Amount of Restitution
Lloyd Shearer.....	\$ 700.00
Wm. O. Given.....	700.00
Thos. F. Carroll.....	1,300.00
David Hamilton.....	500.00; and

(2) Pay to the United States of America a fine of \$2,000, such fine to be paid at such times and in such installments as the Probation Officer of this Court shall direct; (3) obey all laws applicable to her conduct, wherever she may be; and (4) comply with all rules which the Probation Officer of this Court shall prescribe for the guidance of her personal conduct.

It Is Further Adjudged that the probationary periods and the conditions of probation shall be the same as to Counts Two, Three, Four, Five and Six of the indictment; that the probationary periods shall commence and run concurrently; that compliance with the conditions of probation as to Count Two of the indictment shall also constitute compliance with the conditions of probation as to Counts Three, Four, Five and Six; and that a violation of any of the conditions of probation as to

Count Two shall likewise constitute a violation of the conditions of probation as to Counts Three, Four, Five and Six.

It Is Further Adjudged that the defendant be discharged from the custody of the United States Marshal forthwith and that her bail be exonerated.

It Is Adjudged that the defendant is not guilty of the offense charged in Count One of the indictment.

Filed March 28, 1949.

/s/ WM. C. MATHES,

United States District Judge.

EDMUND L. SMITH,

Clerk.

By /s/ LOUIS J. SOMERS,

Deputy Clerk. [28]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the Above-Entitled Honorable Court:

Please Take Notice that the defendant in the above-entitled matter hereby appeals to the Ninth United States Circuit Court of Appeals, from the judgment and sentence heretofore imposed upon her in the above-entitled case, and from the whole thereof, and in connection with taking such appeal makes the following representations:

1. That the attorney who will represent her in connection with said appeal is Hal Hughes,

whose business address is Room 615 Broadway Arcade Building, Los Angeles 13, California.

2. That the address of defendant and appellant is 10054 Culver Boulevard, Culver City, California.

3. That the offense of which appellant has been convicted in the above-entitled matter is a violation of Secs. 694a, 697 and 715, all of Title 38 U.S.C., commonly known as the G. I. Bill of Rights. [29]

4. The judgment of the court after conviction herein upon five counts numbered 2 to 6 of the above numbered indictment was rendered on the 28th day of March, 1949, and the defendant was sentenced as follows:

Counts	Imprisonment	Fine
2	1 year	\$1000.00
3	1 year	1000.00
4	1 year	1000.00
5	1 year	1000.00
6	1 year	1000.00

All sentences to run concurrently. Such sentences were suspended, however, and defendant was placed upon probation for a term of five years, upon the following conditions:

(a) That she make restitution either in the form of credit upon unpaid balances sought to be collected by her, or, if there be no such unpaid balances then by paying the same to the credit of the Veteran upon his loan which is guaranteed by the Government, in the total sum of \$3200.00, distributed as follows: As to the Veteran Shearer \$700; as to the Veteran Given \$700; as to the Vet-

eran Carroll \$1300; and as to the Veteran Hamilton \$500.

(b) That she pay a fine of \$2000; that she obey all the laws of the land and all rules laid down for her conduct by the Probation Department of the Department of Justice.

5. The defendant is not in custody.

/s/ HAL HUGHES,

Attorney for Appellant
Helen Young.

[Endorsed]: Filed March 29, 1949. [30]

[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL

To Edmund L. Smith, Clerk of the Above-Entitled Court:

The Defendant and Appellant, Helen Young, in the above-entitled matter, and on to wit, the 29th day of March, 1949, filed Notice of Appeal herein unto the Ninth United States Circuit Court of Appeals, and with a view to perfecting such appeal, designates to you the said Clerk the following documents and papers and copies of portions of the reporter's transcript, all of which said documents, papers and copies are a portion of your records in the above-entitled case:

1. The indictment.
2. The Bill of Particulars.

3. The Motion to Dismiss.
4. The Order denying the motion to dismiss.
5. Defendant's Motion for Judgment of Acquittal made at the close of the Government's testimony. [31]
6. The Order denying the same.
7. The Motion for Judgment of Acquittal made at the close of all testimony.
8. The Order denying the same.
9. Instruction 13C as given.
10. Defendant's exception thereto.
11. The Court's Order Overruling such Exception to such Instruction 13B.
12. The Verdict as to Helen Young only.
13. The Judgment as to Helen Young only.

Respectfully,

/s/ HAL HUGHES,
Attorney for Defendant and Appellant Helen
Young.

(Acknowledgment of Service.)

[Endorsed]: Filed March 31, 1949. [32]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 33, inclusive, contain the original Indictment; Bill of Particulars; Motion to Dismiss the Indictment and the Several Counts Thereof; Verdict; Judgment and Commitment; Notice of Appeal and Designation of Record on Appeal and a full, true and correct copy of Minute Order Entered January 5, 1949, which, together with copy of reporter's transcript of proceedings on February 25 and March 3, 1949 (partial), transmitted herewith, constitute the record on appeal of Helen Young to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.00, which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 14th day of April, A.D. 1949.

[Seal]

EDMUND L. SMITH,
Clerk.

In the District Court of the United States in and
for the Southern District of California, Central
Division

Honorable William C. Mathes, Judge Presiding.

No. 20,329-WM-Criminal

UNITED STATES OF AMERICA,
Plaintiff,

vs.

HELEN YOUNG and EDYTHE L. FOXALL,
Defendants.

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Los Angeles, Friday, February 25, 1949

Appearances: For the Plaintiff—James M. Carter, Esquire, United States Attorney, by Paul Fitting, Esquire, Asst. United States Attorney. For the Defendants: Hal Hughes, Esquire.

MOTION FOR JUDGMENT OF ACQUITTAL
AT CLOSE OF PLAINTIFF'S CASE IN
CHIEF

The Court: Is it stipulated, gentlemen, that the jury have left the room and the defendants remain present, both of them?

Mr. Hughes: Yes, your Honor.

Mr. Fitting: So stipulated.

The Court: You may proceed, Mr. Hughes.

Mr. Hughes: Under Rule 29 of the Rules of Criminal Procedure the defendants and each of them move for a judgment of acquittal as to each

of the counts severally and as to each defendant as to each such count severally on the grounds:

First, that the Counts Two and following of the indictment do not describe an offense against the Government;

On the grounds, second, that the first count seeks to denounce a conspiracy under Section 88 of Title 18 to commit the crime of conspiracy which is denounced, if at all, in Section 715 of Title 38.

And if your Honor will give me a few moments or give me some time, I would like to talk at some length about this.

The Court: I have been through this matter at one time, Mr. Hughes.

Mr. Hughes: I argued this before your Honor at one [2] time myself, but your Honor did not decide it.

The Court: Since then I have had some occasion to consider it. You may proceed. I was referring more particularly to this incorporation by reference to the statute.

Mr. Hughes: That is what I want to talk about, your Honor.

(Argument omitted from transcript.)

The Court: I am going to read those cases again before this case is over, but not before deciding this motion. You may renew your motion upon the conclusion of all the evidence.

(Further discussion omitted from transcript.)

Mr. Hughes: One other matter, but I will have to find my notes. In one of the counts there was no showing of any knowledge on the part of Mrs.

Young—which was the only part of the charge—with the selling of the lot. That was to Hampton, Count Five.

The Court: Yes; I have that in mind.

Mr. Hughes: And I add to my motion that the Count Five be dismissed as to Helen Young, the only defendant therein named, in that the Government has failed to show by all of the evidence it has produced here that she did cause the bank or anyone else to make a false statement to the Government, or that she did cause the Government to be misled as to the total value. If you will recall, the value of her bid would fit well inside the entire loan. There is no [3] showing that she knew what the other item was at all.

The Court: No; there is not. There is not any showing necessarily that she knew that the two items, added together, would exceed the amount of the appraisal; but there is evidence that she made a false statement, gave false information to the bank as to the contract price of the house, and it is a question for the jury, as I view it, as a matter of proof of whether it is shown beyond a reasonable doubt that the defendant Young did cause it to make the false certificate charged.

Does that complete your points?

Mr. Hughes: Yes, your Honor. And, for fear that I did not say it properly in the first place, this motion is made by Helen Young severally as to Counts One, Two, Three, Four, Five, and Six, and as to Edythe Foxall severally as to Counts One, Two, Three, and Four, is it not?

The Court: One, Two, and Three?

Mr. Hughes: One, Two, and Three.

The Court: In other words, the defendant Foxall joins in the motion with respect to each count in which she is named.

Mr. Hughes: Of course, I take it this motion is not joined in but is made severally on behalf of each defendant?

The Court: Yes.

Mr. Hughes: Because your Honor might well grant it [4] as to one and deny it as to another. Such conditions might exist, so I desire my motion be made severally.

The Court: Severally made by each defendant, directed to each count.

Mr. Hughes: To each count in which her name appears. May the record so show?

The Court: The record may so show, and the motions are denied.

Mr. Hughes: Thank your Honor for your patience in having heard me.

The Court: I am going to reconsider this incorporation by reference again. You may renew your motion, of course, at the close of all the evidence.

Mr. Hughes: Before submission to the jury?

The Court: Yes.

Mr. Hughes: Before argument?

The Court: Yes; at the close of all the evidence. In the meantime, as I say, I want to reconsider the question and reread these authorities which you have cited. [5]

Los Angeles, California

Thursday, March 3, 1949, 9:45 A.M.

**MOTION FOR JUDGMENT OF ACQUITTAL
AT CLOSE OF ALL THE TESTIMONY**

The Court: You may proceed. Is it stipulated, gentlemen, that the jury are absent and the defendants are present?

Mr. Hughes: Yes, your Honor.

At this time on behalf of each of the defendants and severally, and as to each of the Counts One, Two, Three, Four, Five, and Six severally, I again move the court that it enter its judgment of acquittal in behalf of each defendant severally as to each count.

In doing so I do not believe that I am justified in repeating any of the discussion which took place heretofore. I think that your Honor heard my argument then, and I hope that your Honor has read the cases that I cited, the new ones, since that time.

(Argument omitted from transcript.)

The Court: I am of the view that it is a question for the jury. The motions for judgment of acquittal are denied. They will be deemed made as to both defendants as to all counts in which each defendant is charged.

Mr. Hughes: And as to each defendant in each count. [7]

INSTRUCTION 13-C

Section 715 of Title 38 of the United States Code provides in part that:

“Any person who shall knowingly make or cause to be made, * * * or in any wise procure the making or presentation of a false * * * certificate * * * concerning any claim for benefits * * *”

under the Servicemen's Readjustment Act of 1944 shall be guilty of an offense.

Mr. Hughes: Under Rule 30, your Honor, I have an objection that I want to make, and I do not know whether your Honor regards this as a premature time to do so. It seems at least a convenient one. It is before the jury has been charged and it is also before argument.

The Court: Yes; you may. You may wish to renew it before the jury has retired. Is this a general objection or to a specific instruction?

Mr. Hughes: To a specific instruction. It ties in with the whole tenor of the whole argument I have been giving. For identification, it is 13-C, which reads as follows:

“Section 715 of Title 38 of the United States Code provides in part that:

‘Any person who shall knowingly make or cause to be made, * * * or in any wise procure the [8] making or presentation of a false * * * certificate * * * concerning any claim for benefits * * *’

under the Servicemen's Readjustment Act of 1944 shall be guilty of an offense.”

I believe that I have made my general objection to that statement of the law repeatedly, but I

object to this particular instruction in that it does not state the law; that it reads into the law something that is not there; that Section 715 of Title 38 has no application to Section 694(a).

The Court: Under the construction the court has made of it, that instruction would be correct, would it not?

Mr. Hughes: That is true; this would be correct under the theory your Honor has taken. With all due respect, I wish to maintain my position and I wish to keep my record clear.

The Court: Yes. The record will show throughout your insistence upon this point, and that applies to all instructions given with respect to any of the counts that apply—to any of the counts except Count One, I take it?

Mr. Hughes: Yes, your Honor.

The Court: And it will be deemed made to every instruction insofar as it is applicable to any count of the indictment other than Count One.

Mr. Hughes: Yes, your Honor. Is it necessary for me [9] to renew this objection at any future time?

The Court: Is it stipulated that the objection will be deemed made after the jury has been instructed and before the jury has retired?

Mr. Fitting: So stipulated, your Honor.

The Court: And, as to all objections made to instructions during this discussion, will it be stipulated that the objection be deemed renewed, without restating it, after the jury has been instructed and before the jury has retired?

Mr. Hughes: I have always sought to do this thing——

The Court: Is that so stipulated?

Mr. Hughes: ——because I thought it was well to avoid any verbal display of argument in the presence of the jury at the time indicated.

The Court: You are entitled under the Rule now, of course, to have the jury excused after they have been instructed.

Mr. Hughes: Oh, yes; 30 provides they may be excused.

The Court: So that you may make those objections outside the hearing of the jury. But, as a matter of convenience, if counsel stipulate—and I understand you gentlemen have stipulated?

Mr. Hughes: We have stipulated that any objections that either of us make——

The Court: —that any objections that either of you [10] gentlemen make will be deemed repeated then.

(Continued discussion of instructions omitted from transcript.) [11]

CERTIFICATE

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of excerpts of the proceedings had in the above-entitled cause on the date or dates specified therein, and that said transcript is

a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 5th day of April, A.D. 1949.

/s/ ALBERT H. BARGION,
Official Reporter.

[Endorsed]: Filed April 5, 1949.

[Endorsed]: No. 12226. United States Court of Appeals for the Ninth Circuit. Helen Young, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed April 15, 1949.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 12226

HELEN YOUNG,

Appellant,

vs.

UNITED STATES OF AMERICA,

Respondent.

STATEMENT OF POINTS ON APPEAL

Comes Helen Young, Appellant, and sets forth, in accordance with Rule 19 (6) of the rules of this Court, her statement of the points upon which she intends to rely:

1. That none of the counts of the indictment upon which she was convicted sets forth an offense against the United States of America.

2. That each such count of such indictment upon which she was convicted seeks to charge an offense which is not denounced as a crime or offense against the United States by the laws of the land.

3. That the sections of the U. S. Codes relied upon by the Government in each of the counts of which Appellant was convicted are of insufficient clarity and certainty to make them punishable offenses against the United States of America.

4. That the Government, according to its Bill of Particulars herein, relies upon Secs. 694, 694a, 694d,

697 and 715, all of Title 38 U. S. Code. That Sec. 694 is a Civil section and deals with the eligibility of Veterans for loans, the general conditions of guarantees thereof, the definition of "honorable discharge," the nature of lending agencies, and certain general provisions.

That Sec. 694a deals with loans on residential properties and provides three conditions therefor, and that only the third such conditions appears to have application here. It reads:

"That the price paid or to be paid by the Veteran for such property, or cost of construction * * * does not exceed the reasonable value thereof as determined by proper appraisal made by an appraiser designated by the Administrator."

This also is a Civil section.

That Sec. 694d authorizes the Administrator to promulgate rules and regulations, but provides no criminal penalty for the breach thereof.

That Sec. 697 seeks to adopt certain other and older sections of Title 38, U.S.C., and that the only such section relied on by the Government is Sec. 715 thereof.

That Sec. 715 contains the penalty, if any there be. Sec. 715 provides a penalty for the making or presentation of a false or fraudulent affidavit, declaration, certificate, statement, voucher, or paper, or writing purporting to be such, concerning any claim for benefits under Secs. 701-703, 704, 705, 706, 707-715, 716-721 of Title 38 U.S.C., but does

not provide any penalty for the preparation of any such document or the filing thereof in connection with claims under Secs. 694, 694a or 694d of Title 38, U.S.C.

5. That in the premises the Court prejudicially erred in giving the Jury Instruction 13-C, which reads as follows:

Instruction 13-C

Section 715 of Title 38 of the United States Code provides in part that:

“Any person who shall knowingly make or cause to be made * * * or in any wise procure the making or presentation of a false * * * certificate * * * concerning any claim for benefits * * *”

That said instruction was not a statement of the law, since Sec. 715 does not provide any penalty for filing or making, or procuring, or presenting a false certificate concerning claims for benefits under the Servicemen's Readjustment Act of 1944.

Respectfully submitted,

/s/ HAL HUGHES,

Attorney for Appellant.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed April 19, 1949. Paul P. O'Brien, Clerk.